

United States District Court Southern District of Texas

Case Number: 03mc386

ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 119 of _____

☐ Exhibit to: _____
number(s) / letter(s) _____

Other: _____

1 he also shoots his own sister, the woman
2 he grew up with, the woman he knew. He
3 knew she had a family. He knew all
4 about her and yet he was the kind of
5 person who could point a gun at her
6 chest, watch her face, pull the trigger,
7 and then go on to commit more acts
8 within just a few minutes.

9 Think about what kind of a
10 person it took to do that. Think about
11 when he shot Phyllis Taylor. At that
12 time he was a continuing threat to
13 society when he went on to shoot the
14 other people, was he not? He shot
15 Kenneth Butler. After he shot Kenneth
16 Butler was he a continuing threat to
17 society? If Debra were here, she'd
18 vouch for that because then he shot
19 Debra Gardner.

20 This is a man that made
21 deliberate decisions. Think about this.
22 After you had killed a person, after you
23 had shot someone at close range with a
24 gun we could imagine the type of damage
25 it would do, the person is spitting up

1 blood, gasping for air, and you see the
2 results of your handiwork, saw the
3 results of what he did, and yet he's the
4 type of person that continues his
5 assault. He continues his path to the
6 next victim, to the next victim, to the
7 next victim.

8 That tells you about this person
9 and is something you should consider
10 when you're determining whether or not
11 he's a continuing threat to society.
12 These are the type of factors that I'm
13 asking you to consider when you make
14 that determination.

15 You know that if he goes into
16 the general population in prison that he
17 is a risk with alcohol and with drugs.
18 The experts told you that. You also
19 heard from the evidence that alcohol and
20 drugs are available in prison. It's a
21 sad commentary on our system but it's
22 the truth. You know all these things.
23 You know those risk factors are going to
24 be there. As we have discussed,
25 everybody in society has the right to be

1 protected from this defendant wherever
2 he may go.

3 He has proven to you that he is
4 going to be a continuing threat. I
5 don't think there's any way that
6 reasonable people can look at this
7 defendant's background and the evidence
8 in this case, and his lack of remorse,
9 and his deliberateness of action, and
10 argue reasonably that he would not be a
11 continuing threat to society. Remember
12 it's only a probability that he will be
13 a threat to society. I think the answer
14 to Question Number One is clearly yes.

15 Briefly with regard to Issue
16 Number Two, you know your job is to look
17 at all of the evidence. We talked about
18 this on voir dire too. There is simply
19 nothing there. Think about the facts of
20 what this defendant has done, the
21 enormity of his crime, the enormity of
22 what he has left behind, the results of
23 his crime, and you weigh the threat that
24 this man is to society, there is nothing
25 you can find in the evidence that

1 mitigates towards a life sentence for
2 this defendant. It's just not there.

3 Everybody has had hardships in
4 life. Everyone has had hard times.
5 Probably everybody here has had a parent
6 who has died or someone close to them
7 who has died that made their life sad.
8 Everybody has had bad times. A lot of
9 people have had a parent or maybe even
10 two parents that did not live up to
11 their expectations. That does not give
12 you a free ticket to kill and it does
13 not excuse your behavior.

14 Mr. Easterling argues to you
15 about cocaine and alcohol dependency.
16 There is no evidence whatsoever that
17 this defendant was under the influence
18 of any alcohol or cocaine at the time he
19 committed the offense. I believe one
20 witness stated he had a beer in his hand
21 when he first came to Debra's house the
22 first time. That's the only evidence of
23 that. He doesn't get points for that.

24 Whether he has a cocaine or
25 alcohol problem or otherwise, you may

1 think that because he has been arrested
2 for possession of cocaine. On the other
3 hand, he also sold cocaine. That
4 doesn't prove anything. There's no real
5 evidence of that other than his self-
6 reporting to his expert.

7 He has low intelligence but he
8 is not mentally retarded. He's around
9 the average intelligence group that you
10 would find in the prisoner jail
11 population according to the expert. You
12 know that if a person is in the lower
13 range of intelligence that they have a
14 higher likelihood of being violent.
15 That's what their own expert told you,
16 so when you weigh that it balances out.
17 He may have a little lower intelligence
18 but he's more likely to be violent.

19 There is absolutely nothing
20 that's in evidence that would call for
21 you as the jury to give this man some
22 type of break because he doesn't deserve
23 it. He made a lot of choices almost two
24 years ago and he knew the results of
25 what his choices were going to be. He

1 knew the victims. It wasn't anything to
2 do with an impulsive act where he didn't
3 have time to think about what the
4 results were going to be or what the
5 aftermath of his crime was going to be.
6 He knew Debra Gardner. He had lived in
7 the house there with her. He knew that
8 she had children. He knew they were
9 going to be left behind without a mother
10 to raise them and that they'd have to
11 live with different family members. He
12 knew that his sister had children.
13 Maybe he didn't know that much about
14 Kenneth Butler but at least he knew he
15 had a brother. He knew he didn't
16 deserve to die.

17 He knew when he shot Debra
18 Gardner that she was begging for her
19 life. He knew her own children were
20 watching her and he knew that her own
21 children were begging him not to kill
22 their mother. What kind of man would do
23 that? He knew there were younger
24 children involved that loved Debra
25 Gardner. You heard about the little

CAUSE NO. **72810**
IN THE COURT OF CRIMINAL APPEALS
AT AUSTIN, TEXAS

DUANE EDWARD BUCK

Appellant

VS.

THE STATE OF TEXAS,

Appellee

TRIAL CAUSE NO. 699684
APPEAL FROM THE 208TH DISTRICT COURT
OF HARRIS COUNTY, TEXAS
JUDGE DENISE COLLINS, PRESIDING

REPORTER'S RECORD

EXHIBITS

June 25, 1996 - May 7, 1997

FILED IN
COURT OF CRIMINAL APPEALS

JAN 5 1998

Troy C. Bennett, Jr., Clerk

VOLUME 30 OF 30 VOLUMES

MARILYN SKINNER
Certified Official Court Reporter
208th District Court
Harris County, Texas

CAUSE NO. 699684

THE STATE OF TEXAS)	IN THE DISTRICT COURT OF
)	
VS.)	HARRIS COUNTY, T E X A S
)	
DUANE EDWARD BUCK)	208TH JUDICIAL DISTRICT

APPEARANCES:

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MASTER EXHIBIT INDEXVOLUME 2 - PRETRIAL HEARINGS:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-1	Pen Packet	98	98	98	30
S-2	Fingerprint Card	97	--	--	--

VOLUME 25 - TRIAL, MAY 1, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-1	Photograph	60	61	61	30
S-2	Photograph	60/189	61	61	30
S-3	Photograph	60	61	61	30
S-4	Photograph	60	61	61	30
S-5	Photograph	60	61	61	30
S-6	Photograph	60	61	61	30
S-7	Photograph	60	61	61	30
S-8	Photograph	60/189	61	61	30
S-9	Photograph	60/189	61	61	30
S-10	Photograph	60	61	61	30
S-11	Photograph	60	61	61	30
S-12	Photograph	60	61	61	30
S-13	Photograph	60/132	61	61	30
S-14	Photograph	60	61	61	30
S-15	Photograph	60	61	61	30
S-16	Photograph	60	61	61	30
S-17	Photograph	60	61	61	30
S-18	Photograph	60	61	61	30

MASTER EXHIBIT INDEX CONTINUEDVOLUME 25 - TRIAL, MAY 1, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-19	Photograph	60	61	61	30
S-20	Photograph	60	61	61	30
S-21	Photograph	60	61	61	30
S-22	Photograph	60	61	61	30
S-23	Photograph	60	61	61	30
S-24	Photograph	60	61	61	30
S-25	Photograph	60	61	61	30
S-26	Photograph	60	61	61	30
S-27	Photograph	60	61	61	30
S-28	Photograph	60	61	61	30
S-29	Photograph	60	61	61	30
S-30	Photograph	60	61	61	30
S-31	Photograph	60	61	61	30
S-32	Photograph	60	61	61	30
S-33	Audio Cassette	85/198	--	--	--
S-34	Audio Cassette	84/197	--	--	--
S-35	Large Diagram	30	30	30	30
S-36	Search Warrant	43/80	*44	*50	30

MASTER EXHIBIT INDEX CONTINUEDVOLUME 25 - TRIAL, MAY 1, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-37	Box con- taining shell casing	69	71	72	--
S-38	Box con- taining shell casing	69	71	72	--
S-39	Box con- taining shell casing	69	71	72	--
S-40	Bullet fragment from autopsy	76	77	78	--
S-41	Bullet fragment from autopsy	76	77	78	--

MASTER EXHIBIT INDEX CONTINUEDVOLUME 25 - TRIAL, MAY 1, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-42	Plastic bag containing live .22 round	73	74	75	--
S-43	Empty shell casing	73	74	75	--
S-44	Magazine	79	79	79	--
S-45	Large Diagram	65/133	66	66	30
S-46	Marlin .22 Cal. rifle	84	--	--	--
S-47	Marlin .12 gauge shotgun	84/112	--	--	--
S-48	Large Diagram	86	86	86	30
S-49	Photograph Butler	123	--	--	--

*FOR PURPOSE OF THE MOTION TO SUPPRESS HEARING

MASTER EXHIBIT INDEX CONTINUEDVOLUME 26 - TRIAL, MAY 2, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-25	Photograph	256	*	*	30
S-33	Audio	317	--	--	--
	Cassette				
S-34	Audio	**	317/		--
	Cassette		318	318	--
S-37	Box con-	330	*	*	--
	taining				
	Shell				
	Casing				
S-38	Box con-	330	*	*	--
	taining				
	shell				
	casing				
S-39	Box con-	330	*	*	--
	taining				
	shell				
	casing				
S-41	Bullet	348	*	*	--
	fragment				
	from				
	autopsy				

MASTER EXHIBIT INDEX CONTINUEDVOLUME 26 - TRIAL, MAY 2, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-47	Marlin .12 gauge shotgun	330	--	--	--
S-49	Autopsy Photograph -Butler	344/345	345	345	30
S-50	Photograph- Gardner	354	355	355	30
S-51	Autopsy Report- Gardner	343	343	344	30
S-52	Autopsy Report- Butler	343	343	344	30
S-53	Autopsy Photograph -Butler	344/ 345	345	345	30
S-54	Photograph	344/ 345	345	345	30
S-55	Photograph	344/ 345	345	345	30
S-56	Photograph	354	355	355	30

MASTER EXHIBIT INDEX CONTINUEDVOLUME 26 - TRIAL, MAY 2, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-57	Photograph	354	355	355	30
S-58	Photograph	354	355	355	30

*PREVIOUSLY OFFERED AND ADMITTED

**IDENTIFIED VOLUME 25, PAGES 84/197

VOLUME 28 - PUNISHMENT, MAY 6, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-59	Jail Booking Records	10	9/11	21/26	30
S-59A	Jail Booking Records	8	--	--	--
S-60	Jail Booking Records	10	9/11	--	
S-60A	Jail Booking Records	8	--	--	--
S-61	Jail Booking Records	10	9/11	21/ 26	30
S-61A	Jail Booking Records	8	--	--	--
S-62	Jail Booking Records	10	9/11	23/ 26	30
S-62A	Jail Booking Records	8	--	--	--

MASTER EXHIBIT INDEX CONTINUEDVOLUME 28 - PUNISHMENT, MAY 6, 1997:

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-63	Jail Booking	10	9/11	21/	30
	Records			26	
S-63A	Jail Booking	8	--	--	--
	Records				
S-64	Jail Booking	10	9/11	23/	30
	Records			26	
S-64A	Jail Booking	8	--	--	--
	Records				
S-65	Jail Booking	10	9/11	--	--
	Records				
S-65A	Jail Booking	8	--	--	--
	Records				
S-66	Pen Packet	8	9	26	30
S-67	Judgment and	28	28	28	30
	Sentence				
S-68	Judgment and	27	28	28	30
	Sentence				
S-69	Video-Record	73	73	73	--
	Information				
S-70	Fingerprint	6	--	--	--
	Card				

MASTER EXHIBIT INDEX CONTINUEDVOLUME 28 - PUNISHMENT, MAY 6, 1997:

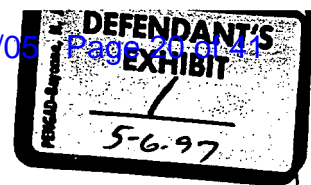
<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.'D.</u>	<u>OFF.</u>	<u>ADM.</u>	<u>SHOWN VOL.</u>
S-70	Summary of State's Evidence	*240/ 242	--	--	--
D-1	Forensic Psychological Evaluation	117	118/ 120	234	30
D-1A	Forensic Psychological Evaluation	143	143	**143	30
D-2	Curriculum Vitae-Patrick Lawrence Ph.D	178	178	179	30
D-3	Psychological Evaluation	216	217	234	30

*DEMONSTRATIVE PURPOSES ONLY

**APPELLATE PURPOSES ONLY

NOTE: EXHIBITS WERE PREMARKED BY ATTORNEYS.

DEFENSE EXHIBIT NO. 1
FORENSIC PSYCHOLOGICAL EVALUATION

**FORENSIC PSYCHOLOGICAL SERVICES**

psychological consultations in the practice of law

2040 North Loop 336 West, Suite 322

Conroe, Texas 77304

Walter Y. Quijano, Ph. D.

Clinical Psychologist

a professional corporation

VOICE: (409) 539-2226

FAX: (409) 539-6308

FORENSIC PSYCHOLOGICAL EVALUATIONNAME: Duane E. BuckDATE: 8 March 1997INTRODUCTION:

Duane, a 33-year-old widowed Black male with a high school education and auto mechanics work background, was referred for a forensic psychological evaluation by his counsel, Danny Easterling, Esq. to assist in his defense. The defendant was charged with capital murder (Cause No. 699684 in the 208th Judicial District of Harris County, Texas).

He was advised that this report was to be submitted to his counsel and that he had the right not to participate in the examination and to terminate the examination at any point he wanted to. He knew of and anticipated the examination.

The information used in this report was gathered for the avowed purpose of assisting in his own defense and should not be used as the basis for determining guilt or innocence.

PROCEDURES:

1. Clinical interview with defendant on 2/14/97
2. Millon Clinical Multiaxial Inventory-II (MCMI-II)
3. Review of defense lawyer's notes on witnesses' statements.

FINDINGS:

Behavioral Observations/Mental Status. The defendant was examined at the Harris County Jail. He was appropriately dressed and groomed. Gait was normal. No unusual gestures were observed. Voice was appropriate for the situation. The defendant was friendly and cooperative.

he was generally oriented

Duane E. Buck, 3/8/97

1 | to time,
2 | Speech was reactive and expressive and contained no association,
3 | delusion, or hallucination disorders. Memory was intact by
4 | interview and fair by self-report. No memory problems were
5 | reported. Abstract thinking was normal by interview in that he
6 | was able to conduct a meaningful conversation. Attention and
7 | concentration were normal,
8 |

21 | The defendant's mood and affect were normal.

34 |
35 | Vegetative signs were reviewed. He sleeps in peace because
36 | of the love of Jesus. His appetite is fair; he fasts for his
37 | spiritual growth. Energy level is normal.
38 |
39 |
40 |

41 | History. The defendant attended school through the 12th
42 | grade, and completed a trade school curriculum in paint and body
43 | automobile repair. He also studied auto mechanics in TDCJ-ID. He
44 | has worked with his father in auto mechanics and used parts "2"
45 | my life".
46 |
47 |
48 |

49 | The defendant has had two common law marriages. The first
50 | marriage from 1984 till 1989 produced a son, now nine.
51 |
52 |

53 | He and former wife continue to be
54 | friends. His second marriage from 1991 till 1995 was with the now
55 | deceased complainant. They had no children.

23
24 MCMII-II. The Personality code was: 8B 3 1 2 ** - * 8A + 7 4
25 6A ' // S ** - * //. The Syndrome code was: B D ** A * // - ** CC
26 *. The test was valid, though he appeared to have magnified the
27 level of experienced illness. Suggested Axis I impressions were:
28

29 296.33 Major depression, recurrent, severe without psychotic
30 features

31 305.00 Alcohol abuse

32 300.02 Generalized anxiety disorder.
33

34 Suggested Axis II impression was a configuration of:
35

36 301.22 Schizotypal personality disorder

37 301.90 Personality disorder NOS (Self-defeating)

38 301.60 Dependent personality disorder.
39

10
11 CLINICAL IMPRESSION:

12 Axis I - 303.90 Alcohol dependence, in remission by
13 incarceration
14 304.20 Cocaine dependence, in full remission by
15 report
16

17
18 Axis II - 301.60 Dependent personality features
19

20 Axis III - None reported
21

22 Axis IV - Psychosocial stressors: incarceration, pending
23 capital murder charge
24

25 Axis V - Global Assessment of Functioning: 60
26 GAF before jail: 50
27

28 CLINICAL RECOMMENDATIONS:

29
30 1. Substance abuse treatment program:
31

32 A. If released to community:
33

- 34 1) Relapse prevention groups: 48 weekly sessions and then
35 aftercare.
36 2) Supervised antagonist therapies: Antabuse for alcohol
37 and Naltroxene for cocaine.
38 3) Random urinalysis at least twice a month.
39

40 B. If incarcerated, participate in an in-house substance abuse
41 program.
42

43 2. Individual therapy to identify Dependent personality disorder
44 features that may have contributed to the conduct charged and
45 modify them.
46

47 FORENSIC RECOMMENDATIONS:
48

49 1. Encourage the defendant to recall the remainder of what he did
50 upon his second return to the house, when he was accused of
51 fatally shooting his girlfriend and a male companion, and
52 shooting his sister. The claim of sudden onset of amnesia just
5 prior to the shootings, after a detailed recollection of the rest
54 of the events, is not credible and not psychological supportable.
55

Duane E. Buck, 3/8/97

12. Future Dangerousness, Whether there is probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society? The following factors were considered in answer to the question of future dangerousness: statistical, environmental, and clinical judgment.

I. STATISTICAL FACTORS

1. Past crimes. Non-contributory. His past offenses were non-violent drug offenses.

2. Age. Decreased probability. He is now 33; street crimes are of lesser probability with this age group and older.

3. Sex Increased probability. Males are more violent than females as a group.

4. Race. Black: Increased probability. There is an over-representation of Blacks among the violent offenders.

5. Socioeconomics. Stable by self-report: Decreased probability. Unstable by a witness' report: increased probability.

6. Employment stability. Stable by self-report: Decreased probability. Unstable by a witness' report: increased probability.

7. Substance abuse. Yes for alcohol at the time of the conduct charged, and cocaine by history: Increased probability.

II. ENVIRONMENTAL FACTORS

1. Family environment. No exposure to family abuse/violence: Decreased probability.

2. Peer environment. Did not Associate with peers that encouraged assaultive crimes: Decreased probability.

3. Job Environment. Past jobs were not conducive to violence: Decreased probability.

4. Availability of victims. Narrow victim pool: Decreased probability. This appears to be "family" type violence with a conjugal jealousy precipitated by a perception of wife's infidelity; the victims were not randomly picked. Non-random victimizers are less dangerous than random victimizers.

5. Availability of weapons. Yes: Increased probability.

6. Availability of drugs. Yes: Increased probability.

III. CLINICAL JUDGMENT FACTORS

1. Mental illness. There is no history of thinking disorder

Duane E. Buck, 3/8/97

1 | that is associated with assaultiveness. This factor is considered
2 | to reduce dangerousness.

3 |
4 | 2. Anti-social personality disorder. The defendant does not
5 | meet the criteria of anti-social personality disorder, though he
6 | has antisocial features. This factor argues for less probability
7 | for continuing violent threat to society.

8 |
9 | 3. Specificity of the situation that induced the conducts
10 | charged. This appears to be a family type violence, influenced by
11 | conjugal jealousy precipitated by his perception of wife's
12 | infidelity. This factor argues for less probability for
13 | continuing violent threat to society.

14 |
15 | 4. Deliberateness. Insufficient data from self-report. He
16 | does not remember shooting the victims, though he admitted to
17 | police he did the shootings at the time of his arrest. He
18 | appeared to be deliberate from witnesses' statements showing he
19 | returned a second time with a gun, forced himself into the house,
20 | and ignored pleadings not to shoot: Increased probability

21 |
22 | 5. Remorse. He does not remember shooting the victim,
23 | though he admitted to the police he did the shootings at the time
24 | of his arrest: Increased probability.

25 |
26 | 6. Post-conducts charged behaviors.

27 |
28 | a. Continuing crimes. None of the versions showed
29 | continuing crimes after the conduct charged since he was promptly
30 | arrested. This factor is not applicable as he did not have the
31 | opportunity to commit more crimes.

32 |
33 | b. Fun:

34 |
35 |
36 | This factor argues for more probability for continuing
37 | violent threat to society.

38 |
39 | c. Surrender. He peacefully cooperated with his arrest,
40 | though the police had a gun pointed at him at the time of arrest.
41 | This factor argues for less probability for continuing violent
42 | threat to society.

43 |
44 | 7. Personal factors that contributed to the conducts
45 | charged. There were personal factors reportedly operating at the
46 | time of the conduct charged that may have made the conduct
47 | charged specific and limited to this offense circumstance, such
48 | that repetition of the offense in the future is unlikely. The
49 | apparent motivation was conjugal jealousy precipitated by his
50 | perception of his wife's infidelity. This factor argues for less
51 | probability for continuing violent threat to society.

52 |
53 | 9. Environmental factors that contributed to the conducts
54 | charged. There were environmental factors reportedly operating at
55 | the time of the conducts charged that may have made the conducts

Duane E. Buck, 3/8/97

specific and limited to this offense circumstance, such that repetition of the offense in the future is unlikely, i.e., The presence of individuals that he perceived as participants in the wife's infidelity. He did not hurt the children. This factor argues for less probability for continuing violent threat to society.


10. **Effect of prolonged incarceration.** The defendant is of course less likely to be dangerous while incarcerated. The effect of prolonged incarceration (e.g., aging) in conjunction with physical restraints (e.g., security level and housing), rehabilitative efforts (e.g., education, substance abuse, punishment, psychiatric services) needs to be estimated. The prison system has enough resources to subdue what level of dangerousness he may bring with him: classification/security level system, housing restraints (administrative segregation and super segregation), supervision, crisis intervention (major use of force techniques), and psychiatric medication intervention.

His behavior record in jail and in previous prison stays may be used as a sign that he may do well in prison. He reported no assaults while in incarceration; he worked and attended school. Furthermore, lifers in the prison system tend to do well and better than short termers. The conditions, e.g., more space, less in-cell time, more out-of-cell activities, in prison is less conducive to acting out.

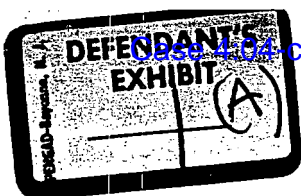
Overall, it appears that, without intervention, the defendant is more likely than not to constitute a continuing violent threat to society. However, if given life instead of death, the prison system has enough resources to safely incarcerate him. Additionally, the factors that can be manipulated and presently contribute to dangerousness can be controlled in prison.

Employment and financial instability is no longer a factor in prison. It is more difficult to gain access to drugs and alcohol and weapons in prison. His victim pool, already narrow in the instant offense because of its family violence features, becomes narrower in prison; furthermore, the prospective victims in prison are less naive in that they are aware of their environment and take the necessary precautions to minimize victimization. The dependent husband/wife relationship, that contributed to the conduct charged, is gone.

Thank you for consulting me on this difficult but interesting case. Please feel free to contact me if you have any questions.


Walter Y. Quijano, Ph.D., P.C.
Clinical Psychologist.

DEFENDANT'S EXHIBIT NO. 1(A)
FORENSIC PSYCHOLOGICAL EXAMINATION



FORENSIC PSYCHOLOGICAL SERVICES

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FORENSIC PSYCHOLOGICAL EVALUATION

NAME: Duane E. Buck

DATE: 8 March 1997

INTRODUCTION:

Duane, a 33-year-old widowed Black male with a high school education and auto mechanics work background, was referred for a forensic psychological evaluation by his counsel, Danny Easterling, Esq. to assist in his defense. The defendant was charged with capital murder (Cause No. 699684 in the 208th Judicial District of Harris County, Texas). The defense lawyer wrote in his 1/13/97 letter to this psychologist that the defendant is "alleged to have shot and killed his ex-girlfriend and a male companion as well as shooting his half sister in the same criminal transaction...".

He was advised that this report was to be submitted to his counsel and that he had the right not to participate in the examination and to terminate the examination at any point he wanted to. He knew of and anticipated the examination.

The information used in this report was gathered for the avowed purpose of assisting in his own defense and should not be used as the basis for determining guilt or innocence.

PROCEDURES:

1. Clinical interview with defendant on 2/14/97
2. Millon Clinical Multiaxial Inventory-II (MCMI-II)
3. Review of defense lawyer's notes on witnesses' statements.

FINDINGS:

Behavioral Observations/Mental Status. The defendant was examined at the Harris County Jail. He was appropriately dressed and groomed. Gait was normal. No unusual gestures were observed. Voice was appropriate for the situation. The defendant was friendly and cooperative.

The defendant was oriented to person, place, and situation. He initially said he did not know the date because he has been in jail since July 1995, but when pressed he was generally oriented

Duane E. Buck, 3/8/97

to time, thinking it was Friday 2/13/97 instead of 2/14/97. Speech was reactive and expressive and contained no association, delusion, or hallucination disorders. Memory was intact by interview and fair by self-report. No memory problems were reported. Abstract thinking was normal by interview in that he was able to conduct a meaningful conversation. Attention and concentration were normal by interview and fair by self-report. Asked if he has noticed anything wrong with his thinking, he stated that he used to have suicide thoughts, and that he thinks about the drunk driver that killed his mom when he was 12, and about his favorite dog that was run over when he was 10 or 11. Insight was mixed; good in that he realized his legal predicament, and poor in his claim of amnesia of the shootings he is accused of. Furthermore, he enumerated examples of depressive episodes including his parents' divorce, his mom's and dog's deaths, and his past drinking and drugging, but did not include the death of Debra Gardner, who he considered to be his common-law wife. Judgment was poor. The defendant appeared to be of questionable reliability as an informant.

The defendant's mood and affect were normal. Asked about his mood, he stated he "wanted my own and be in peace, but the devil does not want you to be in peace". Asked again about his mood, he said he was happy because "Jesus is in my life". Asked about any depressive episodes, he stated that he was depressed over his parents' divorce, his dog's death, and his mom's death. He also was depressed when he was drinking and drugging in the 80's because he was not satisfied with his frame of mind. He reported that he discontinued substance abuse, but engaged in gambling and in the accumulation of material things, which was also depressing to him. He described himself as good tempered and self-controlled when he is not substance abusing. He reported no dysfunctions related to his temper.

Vegetative signs were reviewed. He sleeps in peace because of the love of Jesus. His appetite is fair; he fasts for his spiritual growth. Energy level is normal. Asked about his sex drive, he stated he did not have any as "part of self-control". Active suicide ideation was denied.

History. The defendant attended school through the 12th grade, and completed a trade school curriculum in paint and body automobile repair. He also studied auto mechanics in TDCJ-ID. He has worked with his father in auto mechanics and used parts "all my life". He stated that he "worked all the time". He described his father as fair and supportive, and stated that he believed anyone who accepted Christ is now his real family.

The defendant has had two common law marriages. The first marriage from 1984 till 1989 produced a son, now nine. He described the marriage as a beautiful relationship, but they separated because substance abuse led to physical confrontation, and it was time to separate. He and former wife continue to be friends. His second marriage from 1991 till 1995 was with the now deceased complainant. They had no children.

Duane E. Buck, 3/8/97

The defendant's medical history was noncontributory. He has no history of psychological treatment. The defendant stated he was raised by an alcoholic grandfather, and began drinking at age seven or eight. His last drinking episode was on the day of the instant conduct charged when he was drunk, having drank some liquor with friends and a six pack of beer by himself. He considered his alcohol use abusive through the 1980's. He abstained from alcohol between 1988 and 1989, but resumed drinking again in the early 1990's, quitting in 1994. He remained abstinent until one or two weeks before the instant conduct charged. He also admitted to powder and crack cocaine abuse in 1988 and between 1992 and 1993.

Criminal history was reviewed. In 1989 the defendant was convicted of Possession of cocaine, and was sentenced to three years in TDCJ-ID, though he served in jail. In 1990 he was convicted of Delivery of cocaine, and served one year of a ten year sentence in TDCJ-ID. While in prison, he did well with no assaults and no trouble; he worked and attended auto mechanics school. He served another year of jail time for a parole violation, missing three sessions of substance abuse treatment. He was on parole at the time of his arrest.

MCMI-II. The Personality code was: 8B 3 1 2 ** - * 8A + 7 4 6A ' // S ** - * //. The Syndrome code was: B D ** A * // - ** CC *. The test was valid, though he appeared to have magnified the level of experienced illness. Suggested Axis I impressions were:

296.33 Major depression, recurrent, severe without psychotic features
305.00 Alcohol abuse
300.02 Generalized anxiety disorder.

Suggested Axis II impression was a configuration of:

301.22 Schizotypal personality disorder
301.90 Personality disorder NOS (Self-defeating)
301.60 Dependent personality disorder.

Conduct Charged. The defendant said he is charged with Capital murder, shooting and killing his common-law wife and a male companion, and shooting but not killing his half-sister.

The defendant described the conduct charged as follows:

The defendant was working in his father's business. His wife (Debra) stopped him, along with his uncle John, who was driving his truck. She had come to deliver a change of clothes for the defendant. He bought her gasoline at her request. She told him she loved him and kissed him. The defendant told her he had a bad dream in which something bad happened to her. She said, "I'm all right," and left, supposedly to return to work at her father's business and later to pick up his sister, Phyllis.

Duane E. Buck, 3/8/97

He went back to the shop and drank beer and liquor until 10:00 PM. He and his uncle went to shoot pool. They left at 3:00 AM. His uncle dropped him off at his father's house, and he drove home to his wife. He knocked on the front door, but nobody answered. He peeped over the fence and saw a man on the living room couch. He knocked harder, and when no one answered, he forced the door open and went in. He met his sister, Phyllis, and nobody else, and so he went to the bedroom and saw two men in the bedroom. He and his wife began arguing, and they slapped each other. One of the men held him back and they exchanged words.

The defendant wanted to leave, and packed clothes for himself and his son. The exchange of words with the man continued. The defendant got his tools from the trunk of the wife's car and put them in his truck. He reached out to his wife standing by the door to give her the keys to the car, but she avoided him. She got a knife, and the defendant told her to stab him in the back. The man took the knife from her. The defendant took six to seven beers from the refrigerator and drove off. He ran out of gas by the George R. Brown Convention Center, and had to walk to a service station. While there, he called the house and asked his sister, "Why are you doing this to me?", and asked more questions. He drove to his dad's house, and then returned to his house. He stated that he remembered nothing else from this point on until he was in jail.

In response to questions, the defendant stated that when he first returned to the house, he felt that everything was falling apart. He felt deceived, and as if someone had stabbed his heart. He was very confused and hurt, and felt like he could just die.

When he left the house after arguments with wife and one of the men, he just wanted to get away because he was very confused; he had suicide ideation. He stated that when he ran out of gas, "dark came over me"; he felt like he was headed toward a cliff without brakes; he was scared and hurt, and he wanted to jump off the freeway. He was in tears.

When he called his sister, he felt "different" from previous wife's infidelities, and just needed to talk to somebody. The conversation did not go well, and he felt he got no answers.

Upon his second return to his house, when the shootings allegedly happened, he stated that he does not remember how he felt. He stated that he and his wife were not separated; he was not living at his dad's house.

Notes of the defense lawyer of witnesses' statements were reviewed. Deputy P. E. McGinty reported that when he arrived at the crime scene on 7/30/95, Harold Ebnezer pointed to the defendant as the shooter of Debra Gardner, Kenneth Butler, and Phyllis Taylor, killing Debra and Kenneth and wounding Phyllis. The defendant admitted to Deputy McGinty that he shot Debra

Duane E. Buck, 3/8/97

Gardner, and was arrested. Harold Ebnezer told the Deputy that the defendant came at 3:00 or 4:00 AM that morning, and the police was called. The defendant returned at about 7:24 AM with a shot gun and kicked the door in. The defendant shot at Harold Ebnezer but missed. Harold Ebnezer and Debra Gardner ran out the sliding door, and Harold Ebnezer heard more gun shots inside. Harold Ebnezer jumped the fence and got on the road. Debra Gardner was at this time on the road too and the defendant came out and shot her. The defendant went to a white Jaguar. At 9:15 AM Deputy J. Payne noted that the defendant wanted to use the restroom and said "I fucked up! I shot my sister!" A 22 rifle was found in the trunk of the Jaguar.

Kanetta J. Gardner, a niece of Debra Gardner, reported that the defendant used to date her aunt Debra and was angry at her upon his forced entry for having another man in the house. The defendant hit Debra in the face with his fist in the bedroom. Later that morning, upon hearing gunshots, Kanetta came out of her room and saw Kenny laying on the hallway floor and in the living room saw the defendant laid a gun on the floor while holding another gun. She followed the defendant outside the house and saw him shoot Debra in the street. He retrieved the gun inside the house and put both guns in the trunk of the car.

Shennel L. Gardner, a child of Debra Gardner, reported that her mother Debra had been seeing the defendant for five years. After getting out of jail on 5/95, he stayed with them but Debra got sick of him laying around and not wanting to work. He left and did not come around for two weeks, and Debra started seeing Kenneth Butler. Shennel said the defendant hit Debra in the eye and poured beer on her and left, which Debra reported to the police. Early the next morning after being awakened by a lot of commotion, Shennel saw Kenneth bleeding on the hall floor and Phyllis in the living room holding her chest and calling the police. Shennel ran outside and saw Debra unsuccessfully trying to stop a car, and the defendant chased Debra and shot her. During the bond hearing, Shennel testified that she was beating on the defendant's back, telling him not to shoot her mother, but he shot her anyway.

Harold W. Ebnezer, a brother of Kenneth Butler, who knew Debra for about six or seven years, reported that Kenneth started dating Debra two days prior. He reported that the defendant forced himself into the house earlier in the evening after Debra refused to answer the door, and started to beat on Debra. Harold and Kenneth put themselves between Debra and the defendant, who picked a fight with Kenneth by inviting him to take care of it outside; he added that he wanted to go back to the penitentiary. Arguments continued for about 30 to 45 minutes, and the defendant called Debra a whore, bitch, and other names. Upon the defendant's second forced entry, he had a shotgun and shot at Harold but missed. Harold ran and told Kenneth in the bedroom that the defendant had a gun, and Kenneth got out of bed and went to the hallway and the shooting started. Harold and Debra went out the bedroom patio door and jumped the fence, and Harold heard

Duane E. Buck, 3/8/97

three or four shots. Harold started knocking on doors. Harold saw the defendant with his gun follow Debra into the street. Debra went to the car (a blue Chevy hatchback) parked in front of the defendant's car, but it pulled off and left. The defendant said "Look at them run now." Harold ran around the corner till the police arrived and told the defendant to get down on the ground. Harold told the police the defendant did the shooting, and the police arrested the defendant. Harold saw the defendant laugh like this was funny to him.

CLINICAL IMPRESSION:

Axis I - 303.90 Alcohol dependence, in remission by incarceration
304.20 Cocaine dependence, in full remission by report

Axis II - 301.60 Dependent personality features

Axis III - None reported

Axis IV - Psychosocial stressors: incarceration, pending capital murder charge

Axis V - Global Assessment of Functioning: 60
GAF before jail: 50

CLINICAL RECOMMENDATIONS:

1. Substance abuse treatment program:

A. If released to community:

- 1) Relapse prevention groups: 48 weekly sessions and then aftercare.
- 2) Supervised antagonist therapies: Antabuse for alcohol and Naltrexone for cocaine.
- 3) Random urinalysis at least twice a month.

B. If incarcerated, participate in an in-house substance abuse program.

2. Individual therapy to identify Dependent personality disorder features that may have contributed to the conduct charged and modify them.

FORENSIC RECOMMENDATIONS:

1. Encourage the defendant to recall the remainder of what he did upon his second return to the house, when he was accused of fatally shooting his girlfriend and a male companion, and shooting his sister. The claim of sudden onset of amnesia just prior to the shootings, after a detailed recollection of the rest of the events, is not credible and not psychological supportable.

Duane E. Buck, 3/8/97

2. Future Dangerousness, Whether there is probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society? The following factors were considered in answer to the question of future dangerousness: statistical, environmental, and clinical judgment.

I. STATISTICAL FACTORS

1. Past crimes. Non-contributory. His past offenses were non-violent drug offenses.

2. Age. Decreased probability. He is now 33; street crimes are of lesser probability with this age group and older.

3. Sex. Increased probability. Males are more violent than females as a group.

4. Race. Black: Increased probability. There is an overrepresentation of Blacks among the violent offenders.

5. Socioeconomics. Stable by self-report: Decreased probability. Unstable by a witness' report: increased probability.

6. Employment stability. Stable by self-report: Decreased probability. Unstable by a witness' report: increased probability.

7. Substance abuse. Yes for alcohol at the time of the conduct charged, and cocaine by history: Increased probability.

II. ENVIRONMENTAL FACTORS

1. Family environment. No exposure to family abuse/violence: Decreased probability.

2. Peer environment. Did not Associate with peers that encouraged assaultive crimes: Decreased probability.

3. Job Environment. Past jobs were not conducive to violence: Decreased probability.

4. Availability of victims. Narrow victim pool: Decreased probability. This appears to be "family" type violence with a conjugal jealousy precipitated by a perception of wife's infidelity; the victims were not randomly picked. Non-random victimizers are less dangerous than random victimizers.

5. Availability of weapons. Yes: Increased probability.

6. Availability of drugs. Yes: Increased probability.

III. CLINICAL JUDGMENT FACTORS

1. Mental illness. There is no history of thinking disorder

Duane E. Buck, 3/8/97

that is associated with assaultiveness. This factor is considered to reduce dangerousness.

2. **Anti-social personality disorder.** The defendant does not meet the criteria of anti-social personality disorder, though he has antisocial features. This factor argues for less probability for continuing violent threat to society.

3. **Specificity of the situation that induced the conducts charged.** This appears to be a family type violence, influenced by conjugal jealousy precipitated by his perception of wife's infidelity. This factor argues for less probability for continuing violent threat to society.

4. **Deliberateness.** Insufficient data from self-report. He does not remember shooting the victims, though he admitted to police he did the shootings at the time of his arrest. He appeared to be deliberate from witnesses' statements showing he returned a second time with a gun, forced himself into the house, and ignored pleadings not to shoot: Increased probability

5. **Remorse.** He does not remember shooting the victim, though he admitted to the police he did the shootings at the time of his arrest: Increased probability.

6. **Post-conducts charged behaviors.**

a. **Continuing crimes.** None of the versions showed continuing crimes after the conduct charged since he was promptly arrested. This factor is not applicable as he did not have the opportunity to commit more crimes.

b. **Fun:** From one of the witnesses' statements, he supposedly gloated as people scrambled for safety, i.e., "Look at them run now.", and he appeared to laugh like the whole thing was funny. This factor argues for more probability for continuing violent threat to society.

c. **Surrender.** He peacefully cooperated with his arrest, though the police had a gun pointed at him at the time of arrest. This factor argues for less probability for continuing violent threat to society.

7. **Personal factors that contributed to the conducts charged.** There were personal factors reportedly operating at the time of the conduct charged that may have made the conduct charged specific and limited to this offense circumstance, such that repetition of the offense in the future is unlikely. The apparent motivation was conjugal jealousy precipitated by his perception of his wife's infidelity. This factor argues for less probability for continuing violent threat to society.

9. **Environmental factors that contributed to the conducts charged.** There were environmental factors reportedly operating at the time of the conducts charged that may have made the conducts

Duane E. Buck, 3/8/97

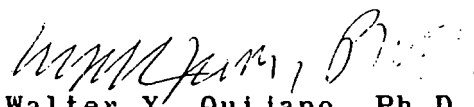
specific and limited to this offense circumstance, such that repetition of the offense in the future is unlikely, i.e., The presence of individuals that he perceived as participants in the wife's infidelity. He did not hurt the children. This factor argues for less probability for continuing violent threat to society.

10. **Effect of prolonged incarceration.** The defendant is of course less likely to be dangerous while incarcerated. The effect of prolonged incarceration (e.g., aging) in conjunction with physical restraints (e.g., security level and housing), rehabilitative efforts (e.g., education, substance abuse, punishment, psychiatric services) needs to be estimated. The prison system has enough resources to subdue what level of dangerousness he may bring with him: classification/security level system, housing restraints (administrative segregation and super segregation), supervision, crisis intervention (major use of force techniques), and psychiatric medication intervention.

His behavior record in jail and in previous prison stays may be used as a sign that he may do well in prison. He reported no assaults while in incarceration; he worked and attended school. Furthermore, lifers in the prison system tend to do well and better than short termers. The conditions, e.g., more space, less in-cell time, more out-of-cell activities, in prison is less conducive to acting out.

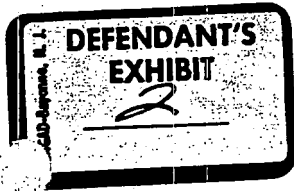
Overall, it appears that, without intervention, the defendant is more likely than not to constitute a continuing violent threat to society. However, if given life instead of death, the prison system has enough resources to safely incarcerate him. Additionally, the factors that can be manipulated and presently contribute to dangerousness can be controlled in prison. He can continue to age in prison; with minimum of 40 years time served, he will be in his 70's at the time of eligibility for discharge. Employment and financial instability is no longer a factor in prison. It is more difficult to gain access to drugs and alcohol and weapons in prison. His victim pool, already narrow in the instant offense because of its family violence features, becomes narrower in prison; furthermore, the prospective victims in prison are less naive in that they are aware of their environment and take the necessary precautions to minimize victimization. The dependent husband/wife relationship, that contributed to the conduct charged, is gone.

Thank you for consulting me on this difficult but interesting case. Please feel free to contact me if you have any questions.


Walter Y. Quijano, Ph.D., P.C.
Clinical Psychologist.

DEFENSE EXHIBIT NO. 2

VITA OF PATRICK G. LAWRENCE, Ph.D.



PATRICK G. LAWRENCE, Ph.D.

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EDUCATION

- | | |
|-------------|-----------------------------------------------------------------------------------------------------|
| 1976 - 1979 | California School of Professional Psychology-Fresno,
Ph.D. in Clinical Psychology |
| 1968 - 1971 | Texas A & I University at Kingsville,
Master of Science in Psychology |
| 1964 - 1961 | Texas A & I University at Kingsville
Bachelor of Business Administration in Financial Management |
| 1958 - 1961 | Peacock Military Academy, San Antonio, High School |

PROFESSIONAL CREDENTIALS

Allied Medical Staff, Nacogdoches Memorial Hospital
Licensed psychologist, Texas #2228
Listed in the National Register of Health Service Providers in Psychology,
Certificate #32082

PROFESSIONAL EXPERIENCES

- | | |
|----------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1988 - Present | SUPERVISING PSYCHOLOGIST, Texas Department of Criminal
Justice, Skyview Psychiatric Facility, Admissions Unit |
| 1987 - Present | PRIVATE PRACTICE, Consultant to the Nacogdoches Memorial
Hospital, Texas Department of Health |
| 1987 - 1988 | DIRECTOR OF PATIENT CARE SERVICES, Pinelands Hospital,
clinical supervision for 40 bed unit |
| 1984 - 1987 | DIRECTOR OF MENTAL HEALTH SERVICES, Wichita Falls MHMR
Community Center, management of a comprehensive psychiatric service
delivery system including 55 residential beds, psychosocial day treatment,
24 hour emergency service crisis intervention, out-patient treatment
program and 2 Fairweather Lodges |
| 1981 - 1984 | PRIVATE PRACTICE, consultant to the Corpus Christi State School,
Guadalupe County Probation Department, Seguin Independent School
System |

Patrick G. Lawrence, Ph.D.
Page 2

1983 - 1984	DIRECTOR OF PSYCHOLOGICAL SERVICES for River Gardens, New Braunfels, clinical supervision and behavior management for a 160 bed ICF-MR Level V Facility
1981 - 1983	EXECUTIVE DIRECTOR, Guadalupe County Guidance Center, a community mental health and substance abuse treatment program in Seguin, Texas
1980 - 1981	PSYCHOLOGIST, Big Spring State Hospital, unit psychological services for a 110 bed geriatric unit
1979 - 1980	PSYCHOLOGICAL INTERN, San Luis Obispo Community Mental Health Center, crisis intervention, day treatment, out-patient and program evaluation
1976 - 1978	PSYCHOLOGICAL INTERN, California Men's Colony, Assessment, group and individual therapy for a maximum security psychiatric prison
1972 - 1975	CLINICAL PSYCHOLOGIST, New Mexico Forensic Treatment System, psychotherapy for mentally ill offenders, competency to stand trial and competency at the time evaluations for referred defendants
1971 - 1972	ASSOCIATE SCHOOL PSYCHOLOGIST, Region 20, Texas Education Agency

ACADEMIC EXPERIENCES

1996 - Current	The University of Texas Medical Branch, Galveston. Conjoint appointments: Department of Psychiatry and Behavioral Sciences and the Department of Preventive Medicine and Community Health Instructor in Institutional and Correctional Health Care.
1989	Stephen F. Austin State University, Nacogdoches, Texas. Department of Psychology, Associate Professor.
1977 - 1979	California Polytechnic State University at San Luis Obispo. Department of Counseling and Guidance, Assistant Professor.
1968 - 1971	Texas A&I University at Kingsville. Department of Psychology and Sociology, Graduate Assistant.

PRESENTATIONS & PUBLICATIONS

A guide to preventing parent burnout: A skills improvement program for coping with family stress (1983). Seguin, Texas: Patrick G. Lawrence, Ph.D.

An update on the standards and practice in forensic evaluations (1996). Presented at the Texas Psychological Association Convention, Dallas, Texas.

A passion for excellence: The psychosocial model (1986). Presented at the National Council of Community Mental Health Centers, Oklahoma City, Oklahoma.

A Solomon four group validation study of Rational Behavior Training with the highly anxious incarcerated patients (1981). Presented at the Psychological Association Convention, Houston, Texas.

Characteristics of inmates referred for inpatient psychiatric treatment (1996). Presented at the Biennial Conference of the American Psychology - Law Society, Hilton Head, South Carolina.

Faking good with the MMPI on Death Row revisited (1996). The Correctional Psychologist, 28, 1-4.

History of psychology in the criminal justice system (1992). Presented at the Texas Psychological Association Convention, Dallas, Texas.

Issues in the treatment of incarcerated persons (1979). Assert, 26, 2.

Psychologists as consultants (1981). Presented at the Southwestern Psychological Association Convention, Houston, Texas.

Practical techniques in conducting treatment groups with self-injurious inmates (1991). Presented at the National Conference on Correctional Health Care, San Antonio, Texas.

Psychological care of Death Row inmates (1989). Presented at the Texas Psychological Association Convention, Austin, Texas.

Psychology and the criminal justice system (1976). Presented at the Southwestern Psychological Association Convention, Albuquerque, New Mexico.

The prediction of future dangerousness (1996). Presented at the Texas Criminal Defense Lawyers Association Capital Murder Seminar, Houston, Texas.

The prediction of future dangerousness in prison for capital murder defendants (1996). Voice for the Defense, 25, 32-35.

Voting Patterns of Mexican-Americans in South Texas (1969). Presented at the Rocky Mountain Social Science Association Convention, Lubbock, Texas.

PROFESSIONAL ASSOCIATIONS

American Association for Correctional Psychology
American Correctional Association
American Psychological Association
 Division of Clinical Psychology
American Psychology - Law Society
East Texas Psychological Association
Texas Psychological Association
 Division of Applied Psychology, Director, 1996-97
Texas State Board of Examiners of Psychologists
 Oral Examiner